

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ALI MOHAMED ELMI,

11 v.
12 Petitioner,

13 STATE OF WASHINGTON,
14 Respondent.

CASE NO. C19-0945-JCC

ORDER

15 This matter comes before the Court on Petitioner's objection (Dkt. No. 7) to the report
16 and recommendation ("R&R") (Dkt. No. 6) of the Honorable Mary Alice Theiler, United States
17 Magistrate Judge. Having thoroughly considered the parties' briefing and the relevant record, the
18 Court hereby OVERRULES Petitioner's objection and ADOPTS Judge Theiler's R&R.

19 This case is a federal habeas action filed pursuant to 28 U.S.C. § 2254. (Dkt. No. 4.)
20 Petitioner is currently confined at the Coyote Ridge Corrections Center. (*Id.* at 1.) He challenges
21 a 2005 judgment of the King County Superior Court. (*Id.*) Judge Theiler recommends dismissing
22 Petitioner's petition without prejudice because he has not exhausted his state court remedies.
23 (Dkt. No. 6) In his objection to Judge Theiler's R&R, Petitioner explains that he purposefully did
24 not do so because it would be futile. (Dkt. No. 7.)

25 The Court shall not grant a writ of habeas corpus on behalf of a state prisoner unless: (1)
26 the prisoner has exhausted the remedies available in the courts of the state; or (2) there is an

1 absence of available state corrective process or circumstances exist that render such process
2 ineffective to protect the rights of the applicant. 28 U.S.C. § 2254(b)(1).

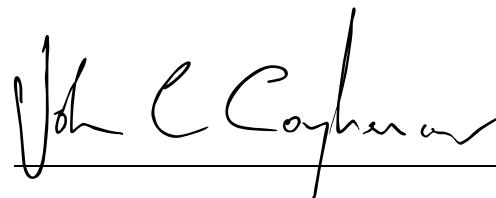
3 A petitioner seeking relief under § 2254 may only appeal a district court's dismissal of
4 his federal habeas petition after obtaining a certificate of appealability. 28 U.S.C. § 2253(c)(1). A
5 certificate of appealability may only issue where a petitioner has made "a substantial showing of
6 the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make a substantial
7 showing of the denial of a constitutional right, the petitioner must "demonstrat[e] that jurists of
8 reason could disagree with the district court's resolution of his constitutional claims or that
9 jurists could conclude the issues presented are adequate to deserve encouragement to proceed
10 further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Court finds that Petitioner is not
11 entitled to a certificate of appealability in this matter. Therefore, the Court DENIES the issuance
12 of a certificate of appealability.

13 **I. CONCLUSION**

14 For the foregoing reasons, Petitioner's objection (Dkt. No. 7) are OVERRULED, Judge
15 Theiler's R&R (Dkt. No. 6) is ADOPTED, and Petitioner's petition for a writ of habeas corpus
16 (Dkt. No. 4) is DISMISSED without prejudice for failure to exhaust state court remedies.
17 Petitioner's motion to compel discovery (Dkt. No. 5) is STRICKEN as moot.

18 DATED this 30th day of July 2019.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE